SECOND DIVISION
August 4, 2015

No. 1-13-2822

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 16432
	)	
RUBEN PETER MOLINA,	)	Honorable
	)	Carol A. Kipperman,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Simon and Justice Neville concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant forfeited his contention that the circuit court committed reversible error when it accepted his jury waiver without admonishing him of the difference between a bench and jury trial and the function and purpose of a jury trial; judgment entered on aggravated criminal sexual abuse conviction affirmed.

¶ 2 Following a bench trial, defendant Ruben Peter Molina was convicted of three counts of aggravated criminal sexual abuse and sentenced to concurrent terms of four years' imprisonment. On appeal, he contends that the circuit court committed reversible error when it accepted his jury

waiver without admonishing him of the difference between a bench trial and a jury trial, as well as the purpose and function of a jury.

¶ 3 On July 2, 2013, defendant's case was scheduled for a bench trial, and the court queried defendant regarding the signature on the jury waiver. Defendant acknowledged that the signature was his, and the court then advised defendant of the following:

> "[b]y signing that waiver you are giving up your right to have this case decided by a jury of 12 members of the community who must reach a unanimous decision. Instead the case will be decided by me alone."

Defendant responded, "Okay, judge," and the following colloquy ensued:

> "THE COURT: And you signed that waiver freely and voluntarily; is that correct?
>
> THE DEFENDANT: He said I have to choose this or a plea.
>
> THE COURT: No. You have a choice of a jury trial or a bench trial.
>
> THE DEFENDANT: No. I was referring to this charge.
>
> THE COURT: Pardon me?
>
> THE DEFENDANT: Take the plea or a trial.
>
> THE COURT: Well, I'm asking –
>
> [COUNSEL]: He has indicated to me he doesn't want – he doesn't want to plead, and he doesn't want to go to trial. He wants to just sit in the jail.
>
> THE COURT: All right. You can't do that. I mean you got to do something. But I have to make sure for the record that you're signing that waiver freely and voluntarily.
>
> THE DEFENDANT: Yeah.

THE COURT: And you realize you have a choice. You can have a jury, or you can have a bench. But it's going to be one or the other. Do you understand that?

THE DEFENDANT: Yes. Bench or jury.

THE COURT: And by signing that waiver you are giving up your right to a jury trial. Do you understand that?

THE DEFENDANT: Yes. I'm giving up the jury trial.

THE COURT: Pardon me?

THE DEFENDANT: I'm giving up the jury trial."

¶ 4 After a recess, the matter proceeded to a bench trial on the three charges of aggravated criminal sexual abuse. The following evidence was adduced at trial. On August 7, 2012, defendant was babysitting his four-year-old nephew, I.M., who was the son of his sister, Esther M. When Esther returned home, she found defendant and her son naked. Defendant's penis was erect, I.M. was crying and told Esther that defendant touched him, "in his pee pee and in his butt." She called police, and defendant later told them that he had inappropriately touched I.M., and offered an alternative explanation at trial. The court found defendant's statement of events completely unbelievable and found defendant guilty on the three counts of aggravated criminal sexual abuse.

¶ 5 On appeal, defendant does not challenge the sufficiency of the evidence to sustain his convictions. Instead, he contends that the circuit court committed reversible error when it accepted his jury waiver without admonishing him of the difference between a bench and jury trial and the purpose and function of a jury. He maintains that the court's cursory and incomplete

admonishments do not support a finding that he knowingly, voluntarily and intelligently waived his right to a jury trial.

¶ 6 The State initially responds that defendant forfeited this issue for appellative review. In order to preserve an issue for appeal, defendant must both object at trial and in his post-trial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant did neither in this case, and, therefore, has forfeited the issue.

¶ 7 Defendant contends, however, that the issue may be reviewed for plain error. The plain error doctrine is a narrow and limited exception to the general waiver rule allowing a reviewing court to consider a forfeited error where the evidence was closely balanced or where the error was so egregious that defendant was deprived of a substantial right and thus a fair trial. *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005).

¶ 8 Defendant maintains that we may review for plain error under the second prong because the validity of a jury waiver implicates fundamental rights. In so asserting, defendant cites *In re R.A.B.*, 197 Ill. 2d 358 (2001), where the supreme court observed that the issue before it involved the knowing waiver of the fundamental right to a jury trial, and considered the issue under the plain error doctrine. *In re R.A.B.*, 197 Ill. 2d at 362-63. The State contends that second-prong plain error must be structural error to be reversible. See *People v. Thompson*, 238 Ill. 2d 598 (2010); *People v. Glasper*, 234 Ill. 2d 173 (2009). The State argues that the alleged jury waiver issue does not constitute structural error.

¶ 9 We need not resolve this controversy because the first step of plain error review is to determine whether error occurred. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). Here, for the reasons that follow, we find none.

¶ 10 The validity of a jury waiver does not rest on any precise formula, but, rather, depends on the facts and circumstances of each particular case. *In re R.A.B.*, 197 Ill. 2d at 364. Although the circuit court must ensure that a defendant's jury waiver is understandingly made, no set admonition is required before an effective waiver may be made (*People v. Tooles*, 177 Ill. 2d 462, 469 (1997)), and a trial court is not required to explain the ramifications of a jury waiver unless there is an indication that defendant did not understand the right to a jury trial (*People v. Steiger*, 208 Ill. App. 3d 979, 981 (1991)).

¶ 11 Here, defendant was represented by counsel and presented a written jury waiver to the court, then acknowledged his signature on it. In the colloquy that followed, the court specifically told defendant that a jury trial consisted of 12 members of the community who must reach a unanimous decision, and in a bench trial the case would be solely decided by the trial judge. Defendant indicated his understanding of this concept, that he signed the jury waiver freely and voluntarily, that he understood his options, and specifically stated he was giving up his right to a jury trial. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). The record thus shows that the court fulfilled its duty to see that defendant's jury waiver was made understandingly. *People v. Reynolds*, 359 Ill. App. 3d 207, 215 (2005).

¶ 12 Defendant, nonetheless, contends that his case is similar to *People v. Sebag*, 110 Ill. App. 3d 821 (1982), where defendant was acting *pro se*, and the court simply told him he is entitled to have his case tried before a jury or judge, defendant then selected a bench trial, and the trial court found that he waived his right to a jury trial. *Sebag*, 110 Ill. App. 3d at 829. This court observed that defendant was not advised of the meaning of a trial by jury nor did it appear that he was familiar with criminal proceedings, and that the trial court's discussion in the record related to the

offense of battery, and that defendant was not arraigned on the public indecency charge for which he was found guilty. *Sebag*, 110 Ill. App. 3d at 829. This court found that the record did not adequately establish a waiver of defendant's right to a jury trial on the public indecency charge, and reversed his conviction and remanded for a new trial on this additional ground. *Sebag*, 110 Ill. App. 3d at 829. *Sebag* is thus factually inapposite to the case at bar where defendant was represented by counsel, the court specifically explained the difference between a bench and jury trial, defendant indicated his understanding, and explicitly waived his right to a jury trial.

¶ 13 We also find defendant's reliance on *People v. Miller*, 55 Ill. App. 3d 1047 (1977), and *People v. Murff*, 69 Ill. App. 3d 560 (1979), misplaced. In *Miller*, 55 Ill. App. 3d at 1048-49, defendant appeared *pro se*, and the court simply asked him if he waived his right to a jury trial and wanted to be tried by the court. Here, the court explained the difference between jury and bench trials and ensured that the waiver was voluntarily and freely made.

¶ 14 In *Murff*, 69 Ill. App. 3d at 564, the court asked defendant if he understood that if he waives a jury trial, he gives up his right to have trial before 12 members of the community who would determine his guilt and innocence. Defendant did not indicate that he understood this, but noted that he had a witness who was not present, and the matter proceeded to a bench trial. *Murff*, 69 Ill. App. 3d at 561-62. The reviewing court observed that there was no indication that defendant understood the concept of a jury trial, or that he was entitled to demand a jury trial or that he knowingly waived his right in favor of a trial by the court, and, given the fact that the trial court was mindful that defendant was receiving treatment from the Illinois Psychiatric Institute, greater concern or consideration may have been necessary. *Murff*, 69 Ill. App. 3d at 564. Here,

unlike *Murff*, there was no indication that defendant suffered from any of these infirmities, but rather, engaged in the colloquy with the court and expressed his understanding of the difference between a jury and bench trial, and freely and voluntarily entered a jury waiver. We thus find no error to warrant plain error review, and honor defendant's forfeiture of this issue.

¶ 15 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.